

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

LEVI SWINNEY,)	
)	
Movant,)	
)	
v.)	Case No. 04-0884-CV-W-HFS
)	Crim. No. 90-00010-04-CR-W-HFS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

Movant seeks relief under 28 U.S.C. §2255. He is much too late for filing such a motion, under the one-year deadline enacted by Congress almost a decade ago. There would be no exception for a claim of ineffective assistance of counsel, which seems to be the gist of the assertion now advanced. Insofar as movant relies on more current law, announced in United States v. Booker, 125 S. Ct. 738 (2005), such a claim, though likely without merit, is premature. Booker offers no relief except for cases on direct appeal or otherwise still open. It is possible, though unlikely, that the Supreme Court would authorize reopening of closed cases for collateral attack, but that could only occur in some future decision.

The motion under §2255 is DENIED as time-barred in part and premature in part.

The motion to file a further reply is DENIED because respondent has not made a filing that is still unanswered.*

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

May 16, 2005

Kansas City, Missouri

*All filings by movant have been considered.